

REMARKS

Claims 1-6, 8-15, 18-24, 26, 27 and 29-35 are currently pending in the application. Claims 13, 14, 32 and 33 have been withdrawn from consideration, Claims 7, 16, 17, 25, and 28 have been cancelled, and Claims 18, 22, 23, 26, and 27 have been amended. Support for the amendment to Claim 18 is found throughout the specification, including, but not limited to the following: Claims 1 and 29. Dependent Claims 22, 23, 26, and 27 have been amended in light of the amendments to Independent Claim 18. No new matter has been entered by the amendment to Claims 18, 22, 23, 26, and 27, and the Applicant respectfully requests the Examiner to enter the claim amendments accordingly.

I. Claim 18 Amendment

The Board of Patent Appeals and Interference Decision dated March 31, 2009 ("Board Decision") reversed the rejection of claims 1-6, 8-12, 15, 29-31, 34, and 35 under 35 U.S.C. §103(a) as being unpatentable by CA 2,512,311 ("Burmeister") and U.S. Patent 6,585,764 ("Wright"), but affirmed the rejection of claims 18-24, 26, and 27 under 35 U.S.C. §103(a) as being unpatentable by Burmeister and Wright. With respect to claims 1-6, 8-12, and 15, the Board held that Examiner has not established that an implantable endoluminal graft comprising a microporous metal thin film covering, with microporous openings passing therethrough, attached to an underlying metal structural support through an affixation member would have been obvious over the combined teachings of Burmeister and Wright. Board Decision at p. 12. The Board stated that "even if one were to combine Wright with Burmeister, the resultant stent/graft would not have "a microporous metal thin film covering having . . . microporous openings passing therethrough" as required by claim 1 (and its dependent claims 2-6, 8-12, and 15). Board Decision at p. 11. As such, claims 1-6, 8-12, and 15 contain patentable subject matter, and the Applicant respectfully requests the Examiner to permit claims 1-6, 8-12, and 15 to allowance.

Additionally, the Board stated that "independent claims 1 and 29, at least, require an "actual element" (App. Br. 12), i.e., an "affixation member" or a "projection" joining the covering and the structural support element, and that this limitation is not met by Burrmeister's two adjacent layers. Board Decision at p. 9. As such, claims 29-31, 34, and 35 contain patentable subject matter, and the Applicant respectfully requests the Examiner to permit claims 29-31, 34 and 35 to allowance.

Independent Claim 18 has been amended to include “a microporous metal thin film covering having microporous openings passing therethrough” and “the structural support element being attached to the microporous metal thin film covering at least one point of attachment including an at least one affixation member”. And since the Board held that the above-identified features for independent Claims 1 and 29 are neither taught nor suggested by Burmeister or Wright, amending Claim 18 with these features indicates that Claim 18 and its dependent claims 19-24, 26, and 27 contain patentable subject matter. The Applicant respectfully requests the Examiner to permit Claims 18-24, 26, and 27 to allowance.

Summary

The Examiner’s rejections of claims 1-6, 8-12, 15, 18-24, 26, 27, 29-31, 34 and 35 have been obviated by the above remarks and the Board’s Decision. Accordingly, Applicants submit that the pending claims are patentably distinct from and over the art cited and of record. Favorable reconsideration of the rejection of the pending claims is solicited.

Any amendments made during the prosecution of this application are intended solely to expedite prosecution of the application and are not to be interpreted as acknowledgement of the validity of any rejection raised earlier in prosecution, nor as acknowledgement that any citation made against the application is material to the patentability of the application prior to amendment.

No fees are believed necessitated by the filing of this Paper. Should any additional fees be required, the Director is hereby authorized to deduct them from Deposit Account No. 18-2000, of which the undersigned is an authorized signatory.

Should the Examiner believe that there are any outstanding matters capable of resolution by a telephone interview; the Examiner is strongly encouraged to telephone the undersigned attorney of record.

Respectfully submitted



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